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 Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 Alexandria Division

In re: *

*

WILLIAM R. JOSEPH, *

Case No. 20-10538-KHK
 (Chapter 7)

Debtor(s). *

KEVIN R. MCCARTHY, TRUSTEE *

Plaintiff, *

vs. *

A.P. No. _____

ROY D. JOSEPH *

3303 Commonwealth Ave., Apt. A *

Alexandria, VA 22305 *

and *

GARY L. JOSEPH *

3520 Pine Court *

Dumfries, VA 22026-2211, *

Defendants. *

TRUSTEE'S COMPLAINT TO SELL INTERESTS OF
 NON-DEBTOR CO-OWNERS IN REAL PROPERTY

Kevin R. McCarthy, Trustee, by and through counsel, in support of his Complaint to sell the interests of the non-debtor co-owners in real property of the bankruptcy estate states the following:

1. The Court has jurisdiction of this Adversary Proceeding pursuant to 28 U.S.C.

§§ 1334 & 157 and 11 U.S.C. § 363(h). Venue is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding.

2. Kevin R. McCarthy is the duly appointed Trustee for the bankruptcy estate of the Debtor William R. Joseph, who filed a petition for relief under Chapter 7 of the Bankruptcy Code on February 21, 2020.

3. The Debtor owns, of record, a one-third interest in the condominium located at 3303 Commonwealth Avenue, Apartment A, Alexandria, Virginia 22305 (“the Property”).

4. The Defendants Gary L. Joseph and Roy D. Joseph, who are the Debtor’s brothers, own, of record, the other two-thirds of the Property. The interests of the Debtor and the Defendants are listed in the Real Estate Affidavit attached as Exhibit A filed in the decedent’s estate case of their mother Doris Jean Joseph, Court File No. CW13001382 in the Alexandria Circuit Court.

5. The legal description of the Property is:

TAX MAP REFERENCE NO. 50400400

ALL THAT CERTAIN LOT OR PARCEL OF LAND, TOGETHER WITH ITS IMPROVEMENTS AND APPURTENANCES, LOCATED IN THE CITY OF ALEXANDRIA, COUNTY OF ALEXANDRIA CITY, VIRGINIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: CONDOMINIUM UNIT NO. 3303A, BUILDING 1 IN AUBURN VILLAGE CONDOMINIUM, AND THE LIMITED ELEMENTS, APPURTENANCES THERETO, IN A CONDOMINIUM REGIME CONSTITUTED AND ESTABLISHED UNDER THE VIRGINIA CONDOMINIUM ACT, CHAPTER 4.2 OF TITLE 55 OF THE CODE OF VIRGINIA (1950), BY A DECLARATION RECORDED IN DEED BOOK 1009 PAGE 609, AMONG THE LAND RECORDS OF THE CITY OF ALEXANDRIA, VIRGINIA. AND BEING THE SAME PROPERTY CONVEYED UNTO THE PARTY OF THE FIRST PART IN DEED BOOK 1532 AT PAGE 1874, AMONG THE AFORESAID CITY LAND RECORDS. THIS CONVEYANCE IS MADE SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RIGHTS-OF-WAY, COVENANTS AND CONDITIONS CONTAINED IN THE DEEDS FORMING THE CHAIN OF TITLE TO THIS PROPERTY.

6. The Trustee intends to sell the Debtor's interest in the Property for the benefit of the Debtor's unsecured creditors. In order to accomplish this, he must also sell the Defendants' interests.

7 Partition in kind of the Property between the bankruptcy estate and the Defendants is impracticable.

8. Upon information and belief, sale of the bankruptcy estate's undivided interest in the Property would realize significantly less for the bankruptcy estate than the sale of such Property free of Defendants' interests.

9. The benefit to the bankruptcy estate of the sale of the Property free of Defendants' interests outweighs the detriment, if any, to the Defendants. Defendant Gary L. Joseph does not reside at the Property, and the Trustee understands that he is amenable to its sale. Defendant Roy D. Joseph resides at the Property. Despite multiple contacts with him since April 2020, and despite substantial equity in the Property, the Trustee has been unable to negotiate a buyout of the Debtor's interest in the Property. Each Defendant will receive his one-third share of net sale proceeds upon a sale of the Property, which one-third share is expected to be at least \$30,000. Similarly, the bankruptcy estate is expected to receive at least \$30,000. The Debtor has claimed as exempt \$5000 in the bankruptcy estate's share of net sale proceeds.

10. The property is not used in a manner specified in 11 U.S.C. § 363(h)(4).

WHEREFORE, the Trustee respectfully requests the Court to enter Judgment:

a) for the Trustee and against the Defendants authorizing the Trustee to sell the Debtor's and the Defendants' interests in the condominium located at 3303 Commonwealth Avenue, Apartment A, Alexandria, Virginia 22305; and

- b) as to the Defendants' interests, authorizing the Trustee to distribute their shares of the net sale proceeds under 11 U.S.C. § 363(j); and
- c) for costs of \$350 in favor of the Trustee and against the Defendants; and
- d) for such other relief as the Court may deem just.

Respectfully submitted,

/s/ Kevin R. McCarthy
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Attorneys for Plaintiff Trustee

REAL ESTATE AFFIDAVIT

COMMONWEALTH OF VIRGINIA VA. CODE § 64.2-510

Court File No. CW13001382

Alexandria

Circuit Court

Doris Jean Joseph

NAME OF DECEDENT

08/20/2013

DATE OF DEATH

William R. Joseph

NAME AND ADDRESS OF SUBSCRIBER

3303 Commonwealth Avenue Apt A, Alexandria, VA 22305

☒ I have an interest as a Legal Heir in the real property of the decedent; AND/OR

☐ I qualified in _____ as
NAME OF COURT

the personal representative of the above-named decedent, who died intestate as to the real estate described herein, and who, at the time of death, was seized of real property in this jurisdiction, briefly described as

3303 Commonwealth Avenue Apt. A, Alexandria, VA 22305

The name and last known address of decedent's heirs are:

NAMES OF HEIRS	ADDRESSES	RELATIONSHIP	AGE
William R. Joseph	3303 Commonwealth Ave #A, Alex, VA	Son	Adult
Roy D. Joseph	3303 Commonwealth Ave #A, Alex, VA	Son	Adult
Gary L. Joseph	3520 Pine Court, Dumfries, VA	Son	Adult

9/9/2013
DATE

William R. Joseph
SIGNATURE OF SUBSCRIBER

State/Commonwealth of ALEXANDRIA [☒ City [] County of ALEXANDRIA

Subscribed and sworn to before me

by WILLIAM R. JOSEPH
PRINT NAME OF SIGNATORY

this 9th day of SEPT, 20 13

[] CLERK [☒] DEPUTY CLERK [] NOTARY PUBLIC

My commission expires N/A

Registration No. N/A

ALEXANDRIA
VIRGINIA: In the Clerk's Office of the _____ Circuit Court this 9th day of SEPT, 20 13
the foregoing AFFIDAVIT was filed and admitted to record.

A COPY TESTE:
EDWARD SEMONIAN, CLERK

Teste: EDWARD SEMONIAN
CLERK

By: [Signature], Deputy Clerk

BY [Signature], DEPUTY CLERK

CERTIFIED THIS 9th DAY OF SEPT, 20 13

FORM CC-1612 MASTER 10/12

EXHIBIT

A